

# **EXHIBIT A**

STATE OF MICHIGAN THIRD JUDICIAL CIRCUIT WAYNE COUNTY	SUMMONS AND COMPLAINT	CASE NO 17-013766-CK Hon. Leslie Kim Smith
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2 Woodward Ave., Detroit MI 48226

Court Telephone No. 313-224-5243

<b>Plaintiff</b>  Paragon 28, Inc.	v	<b>Defendant</b>  Esplin Medical LLC
<b>Plaintiff's Attorney</b>  Carl F. Jarboe 33059 18720 Mack Ave Ste 240 Grosse Pointe Farms, MI 48236-2991		<b>Defendant's Attorney</b>

**SUMMONS NOTICE TO THE DEFENDANT:** In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state). (MCR 2.111(C))
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued 9/15/2017	This summons expires 12/15/2017	Court clerk File & Serve Tyler
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\*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court

**COMPLAINT Instruction:** The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.
☐ This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.  
**Family Division Cases**
☐ There is no other pending or resolved action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties.

☐ An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in \_\_\_\_\_ Court.
The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
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**General Civil Cases**
☒ There is no other pending or resolved civil action arise out of the same transaction or occurrence as alleged in the complaint.

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**VENUE**

Plaintiff(s) residence (include city, township, or village) <b>GROSSE POINTE FARMS</b>	Defendant(s) residence (include city, township, or village) <b>SYLVANIA, OHIO</b>
Place where action arose or business conducted	

9-15-17  
Date
  
 Signature of attorney/plaintiff

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

MC 01 (5/15) SUMMONS AND COMPLAINT MCR 2.102(B)(11), MCR 2.104, MCR 2.105, MCR 2.107, MCR 2.113(C) (2)(a),(b), MCR 3.206(A)



STATE OF MICHIGAN  
THIRD JUDICIAL CIRCUIT  
WAYNE COUNTY

**PROOF OF SERVICE**

CASE NO  
17-013766-CK

**TO PROCESS SERVER:** You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

**CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE**

☐ **OFFICER CERTIFICATE**

OR

☐ **AFFIDAVIT OF PROCESS SERVER**

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)

Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)

☐ I served personally a copy of the summons and complaint,

☐ I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint, together with \_\_\_\_\_

List all documents served with the Summons and Complaint

\_\_\_\_\_ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

☐ I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare that the statements above are true to the best of my information, knowledge and belief

Service fee	Miles traveled	Mileage fee	Total fee
\$	\$	\$	\$

Signature \_\_\_\_\_

Name (type or print) \_\_\_\_\_

Title \_\_\_\_\_

Subscribed and sworn to before me on \_\_\_\_\_, \_\_\_\_\_ County, Michigan.  
Date

My commission expires: \_\_\_\_\_ Date Signature: \_\_\_\_\_  
Deputy court clerk/Notary public

Notary public, State of Michigan, County of \_\_\_\_\_

**ACKNOWLEDGMENT OF SERVICE**

I acknowledge that I have received service of the summons and complaint, together with \_\_\_\_\_  
Attachments  
\_\_\_\_\_ on \_\_\_\_\_  
Day, date, time

\_\_\_\_\_ on behalf of \_\_\_\_\_  
Signature

<b>STATE OF MICHIGAN THIRD JUDICIAL CIRCUIT WAYNE COUNTY</b>	<b>SUMMONS AND COMPLAINT</b>	<b>CASE NO 17-013766-CK Hon. Leslie Kim Smith</b>
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2 Woodward Ave., Detroit MI 48226 Court Telephone No. 313-224-5243

<b>Plaintiff</b>  Paragon 28, Inc.	v	<b>Defendant</b>  Esplin, Kevin
<b>Plaintiff's Attorney</b>  Carl F. Jarboe 33059 18720 Mack Ave Ste 240 Grosse Pointe Farms, MI 48236-2991		<b>Defendant's Attorney</b>

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☐ This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.

**Family Division Cases**

☐ There is no other pending or resolved action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties.

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Plaintiff(s) residence (include city, township, or village) <b>GROSSE POINTE FARMS</b>	Defendant(s) residence (include city, township, or village) <b>SYLVANIA, OHIO</b>
Place where action arose or business conducted	

**9-15-17**  
Date

*Carl F. Jarboe*  
Signature of attorney/plaintiff

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MC 01 (5/15) SUMMONS AND COMPLAINT MCR 2.102(B)(11), MCR 2.104, MCR 2.105, MCR 2.107, MCR 2.113(C) (2)(a),(b), MCR 3.206(A)



STATE OF MICHIGAN THIRD JUDICIAL CIRCUIT WAYNE COUNTY	<b>PROOF OF SERVICE</b>	CASE NO 17-013766-CK
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**CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE**

<input type="checkbox"/> <b>OFFICER CERTIFICATE</b>  I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)	OR	<input type="checkbox"/> <b>AFFIDAVIT OF PROCESS SERVER</b>  Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)
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Signature \_\_\_\_\_

Name (type or print) \_\_\_\_\_

Title \_\_\_\_\_

Subscribed and sworn to before me on \_\_\_\_\_, \_\_\_\_\_ County, Michigan.  
Date

My commission expires: \_\_\_\_\_ Date Signature: \_\_\_\_\_  
Deputy court clerk/Notary public

Notary public, State of Michigan, County of \_\_\_\_\_

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Attachments  
\_\_\_\_\_ on \_\_\_\_\_  
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\_\_\_\_\_ on behalf of \_\_\_\_\_  
Signature

<b>STATE OF MICHIGAN THIRD JUDICIAL CIRCUIT WAYNE COUNTY</b>	<b>SUMMONS AND COMPLAINT</b>	<b>CASE NO 17-013766-CK Hon. Leslie Kim Smith</b>
2 Woodward Ave., Detroit MI 48226		Court Telephone No. 313-224-5243
<b>Plaintiff</b>  Paragon 28, Inc.	v	<b>Defendant</b>  Sanchez, Robert
<b>Plaintiff's Attorney</b>  Carl F. Jarboe 33059 18720 Mack Ave Ste 240 Grosse Pointe Farms, MI 48236-2991		<b>Defendant's Attorney</b>

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Plaintiff(s) residence (include city, township, or village) <b>GROSSE POINTE FARMS</b>	Defendant(s) residence (include city, township, or village) <b>CINCINNATI, OHIO</b>
Place where action arose or business conducted	

9-15-17  
Date

Carl F. Jarboe  
Signature of attorney/plaintiff



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STATE OF MICHIGAN  
THIRD JUDICIAL CIRCUIT  
WAYNE COUNTY

**PROOF OF SERVICE**

CASE NO  
17-013766-CK

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OR

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Date

My commission expires: \_\_\_\_\_ Date Signature: \_\_\_\_\_  
Deputy court clerk/Notary public

Notary public, State of Michigan, County of \_\_\_\_\_

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Attachments  
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Day, date, time

\_\_\_\_\_ on behalf of \_\_\_\_\_  
Signature

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PARAGON 28, INC.,

Plaintiff,

v.

Case No. 17- \_\_\_\_\_ - CK  
Hon. \_\_\_\_\_

ESPLIN MEDICAL LLC, KEVIN ESPLIN,  
and ROBERT SANCHEZ,

Defendants.

17-013766-CK

FILED IN MY OFFICE  
WAYNE COUNTY CLERK  
9/15/2017 12:25:42 PM  
CATHY M. GARRETT

\_\_\_\_\_/

THE JARBOE LAW FIRM, PLC  
By: Carl F. Jarboe (P 33059)  
Attorneys for plaintiffs  
18720 Mack Avenue, Suite 240  
Grosse Pointe Farms, Michigan 48236  
(313) 821-2600  
[cfjarboe@jarboelawfirm.com](mailto:cfjarboe@jarboelawfirm.com)

\_\_\_\_\_/

**COMPLAINT**

There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint. /s/ Carl F. Jarboe (P33059)

NOW COME PLAINTIFF, PARAGON 28, INC., by and through its attorneys, THE JARBOE LAW FIRM, PLC, and, for its complaint, states as follows:

1. Plaintiff, PARAGON 28, INC., is a Colorado corporation authorized to do business in the State of Michigan, with its registered offices in the City of Grosse Pointe Farms, County of Wayne, State of Michigan.

2. Defendant ESPLIN MEDICAL LLC, is an Ohio For-Profit Limited Liability Company, with its registered office in Sylvania, Ohio, conducts business with Plaintiff in Michigan, and has consented to personal jurisdiction and venue in Wayne County, Michigan.



3. Defendant Kevin Esplin is an individual, of majority age, a resident of the city of Sylvania, Ohio, conducts business with Plaintiff in Michigan, and has consented to personal jurisdiction and venue in Wayne County, Michigan.

4. Defendant Robert Sanchez is an individual, of majority age, a resident of the city of Sylvania, Ohio, conducts business with Plaintiff in Michigan, and has consented to personal jurisdiction and venue in Wayne County, Michigan.

5. The amount in controversy is in excess of \$25,000, exclusive of interest and costs, exceeds the exclusive jurisdiction of the Grosse Pointe Farms Municipal Court, and, therefore, this Honorable Court has original subject matter jurisdiction over this civil claim pursuant to MCL 600.605.

6. Venue is proper in Wayne County, pursuant to MCL 600.1621, as Plaintiff conducts business and has its registered offices in Wayne county.

**COUNT I**  
**CONVERSION**

7. Plaintiff incorporates by reference all of the allegations set forth in paragraphs 1 through 6 of this complaint as if the same were more fully stated herein.

8. Plaintiff is a developer and manufacturer of innovative surgical products for the foot and ankle market.

9. Defendants, Esplin Medical LLC, Kevin Esplin, and Robert Sanchez, were independent commissioned sales agents for Plaintiff.

10. The terms of the sales agency relationship and the attendant commission structure were governed by a written Sales Agent Agreement and a written Sales Agent Agreement Amendment, both of which are in the possession of the Defendants.

11. Pursuant to said Agreements, Defendants represented and warranted that they had disclosed in writing, on Exhibit C to the Sales Agent Agreement, all non-Plaintiff products that they intended to carry from January 1, 2017 through the term of the Agreements.

12. Pursuant to said Agreements, Defendants agreed not to carry any other non-Plaintiff products.

13. Pursuant to said Agreements, Defendants agreed that breach of this provision would result in a reduction of Defendants' commissions by a 10% rate.

14. Defendants intentionally failed to disclose that they secretly carried Cartiva products on or after January 1, 2017 and fraudulently stated that they did not carry Cartiva products.

15. The failure to disclose the secret carrying of Cartiva products was done to in order to wrongfully convert unearned commissions from Plaintiff.

16. Defendants continued to deny the carrying of Cartiva products when questioned by Plaintiff's personnel during 2017, perpetuating the conversion.

17. Plaintiff eventually determined that Defendants were carrying Cartiva products and had wrongfully converted commissions from Plaintiff.

18. The sales agency relationship was terminated.

19. During the course of the relationship during 2017, Defendants converted \$32,012.35 in unearned commissions.

20. Pursuant to MCL 600.2919a, a person damaged by another person's conversion is entitled to recover three times the amount of actual damages sustained, plus costs and reasonable attorney fees. This remedy is in addition to any other right or remedy that the person may have at law or otherwise.

21. Pursuant to MCL 600.2919a, Plaintiff is entitled to recover \$96,037.50 plus costs and reasonable attorney fees.

22. Defendants have unpaid commissions for July and August sales in the amount of \$14,713.50.

WHEREFORE Plaintiff, PARAGON 28, INC., prays that this Honorable Court enter its judgment in favor of Plaintiff and against Defendants, ESPLIN MEDICAL LLC, KEVIN ESPLIN, and ROBERT SANCHEZ, in the amount of \$81,323.55, together with interest thereon since the date of the filing of the complaint, together with Plaintiff's costs and reasonable attorney fees so wrongfully incurred as provided by statute.

**COUNT II**  
**CIVIL CONSPIRACY**

23. Plaintiff incorporates by reference all of the allegations set forth in paragraphs 1 through 22 of this complaint as if the same were more fully stated herein.

24. The Defendants worked in a concerted action to fraudulently conceal from Plaintiff their representation of Cartiva products in 2017.

25. The Defendants constitute a combination of two or more persons.

26. Defendants acted to accomplish the unlawful purpose of converting commissions from Plaintiff.

27. The Defendants' concerted action caused financial damage to Plaintiff.

WHEREFORE Plaintiff, PARAGON 28, INC., prays that this Honorable Court enter its judgment in favor of Plaintiff and against Defendants, ESPLIN MEDICAL LLC, KEVIN ESPLIN, and ROBERT SANCHEZ, in the amount of \$81,323.55, together with interest thereon since the date of the filing of the complaint, together with Plaintiff's costs and reasonable attorney fees so wrongfully incurred as provided by statute.

**COUNT III**  
**BREACH OF CONTRACT**

28. Plaintiff incorporates by reference all of the allegations set forth in paragraphs 1 through 27 of this complaint as if the same were more fully stated herein.

29. Defendants' actions as set forth above constitute breach of the parties' contract.

30. In the Sales Agent Agreement, Defendants expressly agreed to indemnify and hold Plaintiff harmless for any and all losses, including reasonable attorney fees, incurred based upon, arising from, or in any way related to breach by Defendants of any of the terms or representations in the Agreement.

31. Plaintiff has suffered loss by the way of wrongfully converted commissions, costs, and reasonable attorney fees.

WHEREFORE Plaintiff, PARAGON 28, INC., prays that this Honorable Court enter its judgment in favor of Plaintiff and against Defendants, ESPLIN MEDICAL LLC, KEVIN ESPLIN, and ROBERT SANCHEZ, in the amount of \$81,323.55, together with interest thereon since the date of the filing of the complaint, together with Plaintiff's costs and reasonable attorney fees so wrongfully incurred as provided by statute and by the parties' contract.

September 15, 2017

THE JARBOE LAW FIRM, PLC

/s/ Carl F. Jarboe

By: Carl F. Jarboe (P 33059)  
Attorneys for plaintiffs  
18720 Mack Ave., Suite 240  
Grosse Pointe Farms, Michigan  
(313) 821-2600  
[cfjarboe@jarboelawfirm.com](mailto:cfjarboe@jarboelawfirm.com)

# **EXHIBIT B**

## STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PARAGON 28, INC.,

Plaintiff,

V.

ESPLIN MEDICAL LLC,

KEVIN ESPLIN, and

ROBERT SANCHEZ,

Defendants.

Case No. 17-013766-CK  
Hon. Leslie Kim Smith

**CARL F. JARBOE (P33059)**  
**THE JARBOE LAW FIRM, PLC**  
Attorneys for Plaintiffs  
18720 Mack Avenue, Suite 240  
Grosse Pointe Farms, MI 48236  
(313) 821-2600  
[cfjarboe@jarboelawfirm.com](mailto:cfjarboe@jarboelawfirm.com)

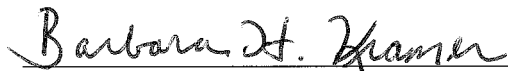
BARBARA H. KRAMER (P49318)  
JOSEPH M. WEST (P69566)  
KRAMER & KRAMER LLP  
Attorneys for Defendants  
24 Frank Lloyd Wright Dr., Lobby D-2000  
Ann Arbor, MI 48105-9484  
Main: (734) 821-1055  
[bkramer@kramerandkramer.com](mailto:bkramer@kramerandkramer.com)  
[jwest@kramerandkramer.com](mailto:jwest@kramerandkramer.com)

**NOTICE OF REMOVAL OF CIVIL ACTION TO THE UNITED  
STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN**

Defendants Esplin Medical LLC, Kevin Esplin, and Robert Sanchez have filed a notice of removal of this action from this Court to the United States District Court for the Eastern District of Michigan. A true and correct copy of the notice of removal is attached as Exhibit A.

KRAMER & KRAMER, LLP

Dated: October 13, 2017

A handwritten signature in cursive script, reading "Barbara H. Kramer", is written over a horizontal line.

BARBARA H. KRAMER (P49318)

JOSEPH M. WEST (P69566)

KRAMER & KRAMER LLP

Attorneys for Defendants

24 Frank Lloyd Wright D., Lobby D-2000

Ann Arbor, MI 48105-9484

Main: (734) 821-1055

[bkramer@kramerandkramer.com](mailto:bkramer@kramerandkramer.com)

[jwest@kramerandkramer.com](mailto:jwest@kramerandkramer.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on October 13, 2017, I sent via overnight delivery the foregoing papers with the Clerk of Court and I mailed by first class mail a copy of the foregoing papers to:

Carl F. Jarboe, Esquire  
THE JARBOE LAW FIRM, PLC  
18720 Mack Avenue, Suite 240  
Grosse Pointe Farms, MI 48236

KRAMER & KRAMER, LLP

Dated: October 13, 2017



BARBARA H. KRAMER (P49318)  
JOSEPH M. WEST (P69566)  
KRAMER & KRAMER LLP  
Attorneys for Defendants  
24 Frank Lloyd Wright Dr., Lobby D-2000  
Ann Arbor, MI 48105-9484  
Main: (734) 821-1055  
[bkramer@kramerandkramer.com](mailto:bkramer@kramerandkramer.com)  
[jwest@kramerandkramer.com](mailto:jwest@kramerandkramer.com)